STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner
v **File No. 121944-001**

Blue Care Network of Michigan
Respondent

Issued and entered
this 10th day of November 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On June 17, 2011, XXXXX (Petitioner) filed a request with the Commissioner of Financial and Insurance Regulation for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*.

The Commissioner notified Blue Care Network of Michigan (BCN) of the external review and requested the information it used to make its final adverse determination. BCN responded on June 22, 2011. [1]

On June 24, 2011, after a preliminary review of the material submitted, the Commissioner accepted the request.

The issue in this external review can be decided by an analysis of the contract that defines the Petitioner's health care benefits. The Commissioner reviews contractual issues under MCL 500.1911(7). This matter does not require a medical opinion from an independent review organization.

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1 BCN provided addition information on June 28, 2011.

II. FACTUAL BACKGROUND

The Petitioner has health care coverage with BCN through the UAW Retiree Medical Benefit Trust that includes by rider a commercial prescription drug plan. The coverage was effective June 1, 2010.

The Petitioner has been taking Revlimid since December 2007 for treatment of multiple myeloma. On January 1, 2011, Revlimid was moved from tier 2 ("preferred brand") to tier 3 ("non-preferred brand") in the prescription drug plan. As a result, his copayment increased from $25.00 to $80.00 for a 30-day retail supply. [2]

The Petitioner asked for an exception to the $80.00 copayment requirement. BCN denied the request and the Petitioner appealed. At the conclusion of its internal grievance process, BCN maintained its denial and issued its final adverse determination dated May 13, 2011.

III. ISSUE

Is BCN required to lower the Petitioner's copayment for Revlimid?

IV. ANALYSIS

Petitioner's Argument

In a letter to OFIR dated June 9, 2011, the Petitioner wrote:

> I have filed my last step two appeal against the increase in the co-payment from 25.00 to 80.00 per month for the prescription cancer drug Revlimid. I have tried all other cancer drugs to treat my multiple myeloma with no results. Revlimid cancer drug is the only cancer drug that has stabilized the cancer, all other drugs have failed.
>
> I appeal to you to consider the wrong and correct this increase in co-payment from 25.00 to 80.00 per month for a cancer drug needed to control my cancer.

The Petitioner wants BCN to cover Revlimid as a tier 2 drug subject to the lower copayment since it is effective and medically necessary for treatment of his condition.

2 The copayment for a 90-day supply went from $50.00 to $160.00.

BCN's Argument

In its final adverse determination of May 13, 2011, BCN stated:

> The [*grievance*] Panel maintained your $80.00 copay for a 30 day supply of Revlimid. In accordance with your . . . PDR $10/$30/$80C Prescription Drug with Contraceptives rider, drugs classified as a non-preferred brand medication are subject to an $80.00 copay for a 30 day supply.

Commissioner's Review

The *PDR $10/$30/$80C Prescription Drug Rider with Contraceptives* imposes the following copayments:

> Retail Prescription Drug Copayment, up to a 30-day maximum supply per prescription:
>
> 1. Generic Covered Drugs (other than Health Habit Drugs for Treatment of Sexual Dysfunction): **$10.00 copay**
> 2. Brand Name Covered Drugs (other than Health Habit Drugs for Treatment of Sexual Dysfunction): **$30.00 copay**
> 3. Non-Formulary [3] Covered Drugs (other than Health Habit Drugs for Treatment of Sexual Dysfunction): **$80.00 copay**

There is nothing in the certificate that requires BCN to lower the copayment for a drug under the Petitioner's circumstances, i.e., when it is medically necessary. Similarly, there is nothing in state law that prevents a health plan from applying a higher copayment to non-formulary (i.e., non-preferred) drugs. While a health plan that offers prescription drugs may limit that benefit to drugs included in a formulary, it must provide for non-formulary alternatives when medically necessary and appropriate and it may impose higher cost sharing requirements on the non-formulary alternatives. See MCL 500.3406o.

The Commissioner finds that BCN's application of an $80.00 copayment for nonpreferred drugs is consistent with the terms of the prescription drug rider and state law.

V. ORDER

The Commissioner upholds Blue Care Network of Michigan's final adverse determination of May 13, 2011. BCN is not required to reduce the copayment for the non-preferred brand drug Revlimid.

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3 Non-formulary drugs are the same as non-preferred drugs.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

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R. Kevin Clinton
Commissioner